

16 October 1972

MEMORANDUM

SUBJECT: Release of Political Prisoners Held by GVN

1. Assuming that an overall cease-fire included legalization of the Communist Party, it would make little difference whether An Tri prisoners were in categories A, B or C. It would be ironical for President Thieu suddenly to insist that the NLF is not, after all, the wholly controlled instrument of the Lao Dong Party. Thieu has long been on record as offering participation in the South Vietnamese political process to the enemy, and such participation clearly implies that prisoners convicted only of Communist party membership should regain complete freedom. (The "4 noes" would obviously have to be modified considerably to permit legalization of a Communist party in South Vietnam. Thieu's continuing emphasis on the "4 noes", in spite of prior offers partly contradicting them, is usually explained as designed to bolster military morale and the GVN's bargaining position.) Logically the GVN would, as part of a settlement, have to release all political and military prisoners, retaining only criminals convicted of "common law" type crimes.

Practically, of course, the Communists might, if they are sufficiently anxious for a settlement, accept something less.

2. There would be a number of fairly clear-cut cases for release; e.g. Truong Dinh Dzu and Tran Ngoc Chau and his brother. Also, the death sentences passed in absentia on all leaders of the "Alliance" would presumably be removed. But there would doubtless be a large number of

border-line cases involving terrorists, sappers, etc. A good case could be made for release of sappers *guilty of attacking military targets - bridges, barracks, etc. The case for releasing sappers* who have attacked refugee camps or

leprosaria seems much weaker, and Thieu would (morally) be on solid ground in insisting on keeping them in prison. Similarly, even among terrorist assassinations distinction can be made: Murder of a Province Chief can be defended as a military act, but murdering his wife and children is much less easily defended. In the final analysis, however, such moral distinctions may come to seem irrelevant: Release of a thousand or so murderers may seem a reasonable price to pay for release of American POW's; and, on the other hand, Thieu may be much more reluctant to release certain key Communist cadres than a lot of low level murderers.

3. An overall settlement which legalized a Communist party would also imply a kind of legitimization of the VC's long struggle and even of its methods, including terror. *cf.* (cf. Israel, Kenya, Algeria inter alia) Thus in the end we should be prepared -- if necessary and if other

conditions of the prospective settlement were satisfactory -- to press Thieu to release all prisoners in whom the other side is interested. Naturally we should not prematurely reveal this willingness, but it is a bargaining position to be conceded at an appropriate time for an otherwise satisfactory settlement. Probably Thieu, who is much more a pragmatist than an ideologist or moralist, could be persuaded.

W A